

LAW SOCIETY OF ALBERTA
IN THE MATTER OF THE *LEGAL PROFESSION ACT*;
AND
IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF KEITH SHUSTOV,
A SUSPENDED MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee:

Nancy Dilts, Q.C., Chair (Bencher)

Appearances:

Counsel for the Law Society – Karl Seidenz

Mr. Keith Shustov – self represented

Hearing Date:

October 30, 2015

Hearing Location:

Law Society of Alberta at 500, 919 – 11th Avenue S.W., Calgary, Alberta

HEARING COMMITTEE REPORT

Jurisdiction and Preliminary Matters

1. On October 30, 2015, a hearing was conducted at the Law Society of Alberta office in Calgary for the purpose of considering the conduct of Keith Shustov (“Member”). The hearing was conducted by Nancy Dilts QC, Bencher, as a single bencher hearing. The

Law Society of Alberta (“LSA”) was represented by K. Seidenz. Mr. Shustov was present at the hearing and did not have counsel.

Citations

2. The LSA issued two citations against the Member:
 1. *It is alleged that Mr. Shustov failed to communicate with his client and that such conduct is deserving of sanction.*
 2. *It is alleged that Mr. Shustov failed to serve his client and that such conduct is deserving of sanction.*

Proceedings

3. The matter proceeded as a single bench hearing with the consent of both parties and in accordance with the provisions of section 60 of the *Legal Profession Act*, RSA 2000 c L-8 (“Act”). Under subsection 60(1) of the Act, a member may submit a statement of admission of guilt of conduct deserving of sanction to the Executive Director. Pursuant to subsection 60(2), where that statement of admission of guilt is submitted prior to the appointment of a Hearing Committee, that statement of admission of guilt can only be acted upon if it is in a form acceptable to the Conduct Committee
5. The Member’s Statement of Admitted Facts and Admission of Guilt was signed and dated on May 25, 2015 (“Statement”) and put before a three person Conduct Committee Panel on July 8, 2015. The Panel of the Conduct Committee determined that the Statement was in a form acceptable to it as contemplated in paragraph 60(2)(a) of the Act. This Hearing Committee was then appointed as a single Bench hearing pursuant to subsection 60(3) of the Act.
7. Pursuant to subsection 60(4) of the Act, each admission contained in the Member’s Statement is deemed for all purposes to be a finding of the Hearing Committee that the Member’s conduct is deserving of sanction.
8. Guilt having been determined by the Panel of the Conduct Committee, the remaining matter to be determined at the Hearing was the appropriate sanction on the two citations.

Review of the Evidence

9. The Member was admitted to the LSA on November 6, 2009 and at the time of the Hearing was a suspended member for conduct unrelated to the complaint at issue.
10. The conduct forming the basis for the citations and the finding of guilt arose in 2011 when the Member was an associate lawyer practicing at Barr Picard in Edmonton. He

was retained by the complainant WA on a pro bono basis through the Edmonton Community Legal Centre to assist WA in recovering a debt owed to her. Summary judgment was obtained and the Member was to take steps to enforce the judgment. The Member failed to take any steps to enforce the judgment to assist WA in recovering the debt owed to her.

11. The Member's lack of diligence with respect to WA's file persisted for more than 18 months despite WA's reasonable and consistent efforts to reach him. In that period of time, the Member failed to take any steps to collect on the judgment obtained in WA's favour, including failing to file a Writ of Enforcement or Garnishee Summons. He failed to reply to WA's reasonable inquiries or to return her phone calls and failed to inform WA when he left the Barr Picard law firm. WA ultimately retained new counsel to enforce the judgment.
12. The Member provided written responses to the LSA regarding WA's complaint. In those responses, he suggested that his intentions were to resume work on WA's file when she returned from overseas. The evidence is clear that despite WA's absence from Canada, she called the Member once or twice every month to inquire into progress on her file and arranged for a family member and a friend to call the Member on her behalf.

Sanction

13. The Parties tendered a joint submission on sanction recommending that the Hearing Committee issue a reprimand and order that the Member pay the costs of these proceedings.
14. Paragraph 56 of the Hearing Guide states that where a submission on sanction is made jointly, the Hearing Committee should give serious consideration to the joint submission and should accept it unless it is unfit, unreasonable or contrary to the public interest. The Hearing Committee, however, is not bound by the submission and may determine a more appropriate sanction after hearing the parties.
15. In sanctioning a member, the Hearing Committee is to take a purposeful approach, recognizing that the overarching purpose of the sanctioning process is to protect the public, preserve high professional standards, and preserve public confidence in the legal profession: *Law Society of Alberta v Mackie*, 2010 ABLS 10. The purpose of sanctioning is not to "punish offenders and exact retribution": Gavin MacKenzie, *Lawyers and Ethics: Professional Responsibility and Discipline* (looseleaf ed current to 2008) (Toronto: Carswell, 1993), p 26-1.
16. This Hearing Committee must therefore consider whether the joint submission on sanction is reasonable given the circumstances and is in the interest of the public.

Decision on Sanction

17. The Member appeared before the Hearing Committee as a suspended member of the LSA. The Member is a young man and was a relatively new member of the LSA when he was suspended for conduct unrelated to the complaint filed by WA. It is evident from the Member's responses to inquiries at this Hearing that he has given a great deal of thought to his failure to cope with the pressures of practicing law in a law firm setting. The Member was not callous in his disregard of WA's file, but was overwhelmed by the demands of practice and failed not just to serve WA, but personally in displaying conduct that warranted his suspension at such a young age and so new to practice.
18. The fact that the Member is currently suspended means he poses no present risk to the public. Should he apply to the LSA for reinstatement, he will be required to demonstrate his fitness to resume the privilege of practicing law and undoubtedly will be monitored.
19. It is also worthy to note that the Member cooperated with the LSA to make quick and thorough admissions regarding his conduct. He appeared before this Hearing Committee contrite and humbled and genuinely apologetic and honest about what led to his failure in this instance.
20. Having regard to all of the circumstances surrounding the complaint and having heard from counsel for the LSA and from the Member, this Hearing Committee concludes that a reprimand and an order requiring the payment of costs is an appropriate sanction. A reprimand is considered a public expression of the profession's denunciation of the lawyer's conduct and is to deter future misconduct by the member and within the profession: *Law Society of Alberta v Westra*, 2011 CanLii 90716.

Reprimand

21. The following reprimand was delivered to the Member at the conclusion of the Hearing:

As members of the Law Society, our obligation is to discharge our professional duties diligently, recognizing that the public relies on us and they trust us to protect and serve their interests. In this matter, you failed to serve the interests of your client quite profoundly. In addition to your failure to take action to advance her claim through collection, you failed to keep her informed, you failed to respond to her reasonable inquiries, and you hid from the responsibility to do so. Your actions demonstrated a remarkable lack of accountability.

Accountability and integrity are the cornerstones of our profession and they are essential to the successful practice of law in Alberta. The current Code of Conduct, in its preface, says two fundamental principles underlie the Code and are implicit throughout its provisions: First, a lawyer is expected to establish and maintain a reputation for integrity, the most important attribute of a member of the legal profession; second, a lawyer's conduct should be

above reproach. Mr. Shustov, in both instances, you have failed and you have paid a very significant price.

The practice of law is not for everybody. It is a demanding and strenuous profession; but as a member of the Law Society, you are given the privilege of practicing and, if you accept that privilege, you are obligated to practice with integrity and keeping in the front of your mind the responsibility of service to your client.

The role of the Law Society is to protect the interests of the public and to protect the reputation and the standing of the profession. Your conduct in this matter fell far short of the professional standards we, as members of the Law Society, are obligated to uphold. You have paid a significant price. You have, for a period of time, lost your livelihood, and you are precluded from using your education and your skills, and this is nothing short of a tragedy. If you choose to return to the profession of law, you must take seriously the opportunity to learn from those in the Law Society's Practice Review department who will assist you in finding a way to practice successfully; and take seriously your obligation to learn and understand and to embody the obligations of integrity that are prevalent throughout our Code and are the cornerstone of our profession.

You have an uphill battle. The practice of law is rewarding if you understand your own limitations and if you put in practice the right structures and checks and balances. You have a careful decision to make and I encourage you to make it responsibly. If you choose to re-enter the profession, do so understanding your obligations to establish and maintain a reputation of integrity and to practice in such a way that your conduct is above reproach.

Concluding Matters

22. In the event of any request for public access to the evidence heard in these proceedings, the Exhibits and the transcript of proceedings shall be redacted to protect the identity of the Member's former clients, and any information subject to proper claims of privilege.
23. No referral to the Attorney General is directed.
24. There shall be no Notice to the Profession.
25. Actual costs of these proceedings as reflected in the final Statement of Costs to be issued by the LSA shall be payable within one year of the Member's reinstatement as a member of the LSA.

Dated at the City of Calgary, in the Province of Alberta this 29th day of February, 2016.

Nancy Dilts, QC
Bencher and Chair